

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. MCTIGUE
DIRECTOR

August 12, 1992
AO-92-17

Ms. Karen L. MacNutt
Suite 800
47 Winter Street
Boston, MA 02108

Re: "Involuntary" State Employee

Dear Ms. MacNutt:

This letter is in response to your May 12, 1992, letter requesting an advisory opinion regarding a public employees fundraising restrictions.

You have stated that as a member of a board which meets four times each year, you receive a de minimus salary of \$50.00 per meeting. You also stated that your commission has expired, however, you must continue to serve until a qualified replacement is found, thus you are an "involuntary" public employee. In the context of your unique situation you ask whether you are still prohibited from fundraising for a political purpose.

The restrictions of M.G.L. c.55 prohibit political fundraising by public employees who are "employed for compensation." M.G.L. c.55, s.13. In previous advisory opinions this Office has interpreted section 13 as applicable to "any person who is paid directly any sum by the Commonwealth, or any subdivision thereof, to perform services" See AO-90-10 (emphasis added). Since you are paid monies directly from the Commonwealth you are prohibited from political fundraising as a person "employed for compensation," even though your salary is relatively small. M.G.L. c.55, s.13.¹

1. This conclusion remains the same whether or not you accept your allotted compensation. See AO-92-07 which noted that the "issue is not whether a person needs, wants, or accepts compensation but whether the legislature has designated that position as a compensated (and important) one and, therefore, subject to section 13."

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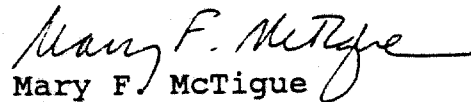
The above analysis is not altered by your status as an "involuntary" public employee. In support of your belief that this status warrants different treatment you cite Rugg v. Town Clerk of Arlington, 364 Mass. 264, 303 N.E.2d 723 (1973). Rugg held that a town finance committee member's term may continue beyond the specified length, but this additional time is not "during the term for which he was elected or appointed." Id. at 727. The court held that during this "holdover" period the board member is not subject to a statute "preventing one person from holding two [positions]." Id. at 726. However, the restrictions of M.G.L. c.55, s.13, are founded upon an entirely different concept. As AO-90-07 states: "Section 13 is designed primarily to prevent corruption or the appearance of corruption on the part of appointed public officials within the context of political fundraising efforts." (emphasis added). It is clear that Rugg does not address nor does it apply to fundraising by public employees.

The prevention of corruption or the appearance of corruption justifies the restrictions of M.G.L. c.55, s.13, See Austin v. Michigan Chamber of Commerce, 110 S.Ct 1391 (1990), Weld for Governor v. Director of the Office of Campaign and Political Finance, 407 Mass. 761, 770, 556 N.E.2d 21, 26 (1990). Therefore, M.G.L. c.55, s.13, is applicable to a public employee "employed for compensation," even though constitutionally protected rights are restricted.

In addition, by accepting the position you knew, or should have known, of the potential holdover situation, whereby you would be required to serve beyond the intended duration of your appointment. Thus, you were aware upon accepting the position that you would be a public employee for the term of your appointment, plus any additional time required to find a suitable replacement. These facts make it clear that you are not, as you stated, an "involuntary" public employee. Therefore, it is the opinion of this Office that, until a qualified replacement for your position is found, you may not engage in fundraising for political purposes without violating M.G.L. c.55, s.13.

This opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c.55. Please do not hesitate to contact this office if you have additional questions regarding the campaign finance laws.

Very truly yours,


Mary F. McTigue
Director

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